

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is executed as of July 20, 2021, by and among Richland County, South Carolina (Richland County), Central Midlands Regional Transit Authority (CMRTA), and the South Carolina Department of Revenue (Department) (together, the "Parties").

RECITALS:

WHEREAS, the Optional Methods for Financing Transportation Facilities Act (the Transportation Act), codified at Title 4, Chapter 37 of the Code of Laws of South Carolina 1976, as amended, authorizes the governing body of a county to impose a sales and use tax in an amount not to exceed one percent (the Transportation Tax, sometimes commonly referred to as the Penny Tax) within its jurisdiction for a single project or for multiple projects for a specific period of time to collect a limited amount of money, *see* S.C. Code Ann. § 4-37-30(A) (Supp. 2020); and

WHEREAS, Penny Tax revenues must be used in accordance with statutory restrictions imposed by the General Assembly, namely, proceeds must be used for the types of transportation-related projects identified in the Transportation Act; and

WHEREAS, following the enactment of Ordinance No. 039-12HR (Ordinance) and a county-wide referendum, Richland County approved a Transportation Penny Tax Program effective beginning May 1, 2013, to fund construction and improvement of roadways, bicycle and pedestrian pathways, and greenways, which would also fund an expansion of the bus service, and which tax would not exceed 22 years at a maximum cost not to exceed \$1,037,900,000; and

WHEREAS, the South Carolina Supreme Court ruled in *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 304, 811 S.E.2d 758, 764 (2018), that the Department has extensive administrative oversight and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code and that those statutory obligations confer upon the Department the authority to ensure Richland County's expenditures of Penny Tax revenues comply with the State's revenue laws; and

WHEREAS, the Supreme Court determined that a proper expenditure of Transportation Tax funds must be tethered to a specific transportation-related capital project or the administration of a specific transportation project; and

WHEREAS, following the Supreme Court's ruling, the Circuit Court entered a Temporary Injunction adopting guidelines (Guidelines) to be used to determine whether all of Richland County's and CMRTA's use of Penny Tax funds comply with South Carolina law, and authorized the Department to further audit Richland County's Penny Tax Program; and

WHEREAS, in compliance with these Court decisions, and to promote public accountability and transparency in collection and expenditure of Penny Tax revenues, DOR audited County and CMRTA expenditures of Penny Tax funds, in accordance with the Guidelines, from May 1, 2013 through May 31, 2018 (Audit Period); and

WHEREAS, on July 30, 2020, the Department issued its final audit findings for the Audit Period (Final Audit Report) to Richland County and the CMRTA and, in response, Richland County initiated a second proceeding against the Department in the South Carolina Administrative Law Court, in which it challenged the audit findings in the Department's final audit report; and

WHEREAS, the above-described litigation remains pending, both in the Court of Common Pleas captioned *Richland County, et al. vs. South Carolina Department of Revenue*, Docket No. 16-CP-40-3102 (Circuit Court Litigation), and in the South Carolina Administrative Law Court captioned *Richland County v. South Carolina Department of Revenue*, Docket No. 20-ALJ-17-0224-CC (ALC Litigation) (the Circuit Court Litigation and the ALC Litigation are collectively referred to in this Agreement as the Pending Litigation); and

WHEREAS, the Department's purpose in initiating its review and audit of the Penny Tax Program was to promote public accountability and transparency regarding the collection and expenditures of revenue generated by the Penny Tax, not to impose financial hardship on Richland County; and,

WHEREAS, from the inception, the Department's primary concern was the absence of a uniform standard applied by Richland County to determine whether its expenditure of Penny Tax revenues were spent specifically on transportation-related projects in compliance with the Transportation Act; and

WHEREAS, the Department recognizes that although the Penny Tax is paid by both residents and non-residents of Richland County who make purchases subject to sales tax in Richland County, any reimbursement of the Penny Tax Program from the Richland County general fund is made primarily from taxes collected only from Richland County residents, thereby imposing a disproportionate burden on Richland County residents for funding reimbursements of any improper Penny Tax expenditures; and

WHEREAS, throughout the audit process, Richland County has worked collaboratively and cooperatively with the Department in an effort to resolve the questions and issues raised by the Department during its review and audit of the Penny Tax Program, including working with the Department to establish the Guidelines and ensure all expenditures are compliant with the Transportation Act retroactively and in the future; and

WHEREAS, the Department's Final Audit Report contained no findings of civil or constructive fraud, self dealing, improper relationships, or civil conspiracy on the part of Richland County; and

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WHEREAS, Richland County has taken a number of significant steps to ensure that its constituents have confidence in the Penny Tax Program, including reimbursing the Penny Tax Fund for certain expenditures following the Supreme Court's decision in 2018, operating the Penny Tax Program in compliance with the Guidelines since those Guidelines were put in place, and bringing the administration of the Penny Tax Program in-house; and

WHEREAS, Richland County has demonstrated a continuing commitment to fostering and maintaining an open government and being transparent to taxpayers regarding the Penny Tax Program; and

WHEREAS, the Parties agree that there exists a genuine factual and legal dispute between the Department, Richland County, and the CMRTA regarding the categories of Penny Tax expenditures that the Department considers ineligible under the Transportation Tax and regarding the amount of money to be repaid to the Penny Tax Program resulting from such expenditures made during the Audit Period, and the Parties further agree that it is in their respective interests to reach a final resolution disposing of all issues and differences pertaining to Richland County's Transportation Penny Tax program for all periods from the inception of the Penny Tax Program through the date of the execution of this agreement (Dispute Period); and

WHEREAS, the Parties agree that this Agreement now is reasonable and desirable to avoid the ongoing cost, expense, and uncertainty of litigation and is a means for final resolution of all disputes regarding Richland County's Transportation Penny Tax program during the Dispute Period, including but not limited to the Audit Period and Pending Litigation; and

WHEREAS, the Parties wish to enter into this Agreement in order to fully and completely resolve each and every aspect of any and all disputes, claims or defenses, asserted or unasserted, known or unknown, by the Department, Richland County, and CMRTA relating to Richland County's Transportation Penny Tax Program during the Dispute Period, thereby forever closing the Dispute Period from further audit, review, determination, findings, or any other actions of any other kind or nature by the Parties;

NOW, THEREFORE, in consideration of these recitals, for the mutual benefits accruing to Richland County, CMRTA, and the Department from the execution of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with no admission of liability on the part of any party – each balancing the hope of gaining against the risk of losing with respect to the taxes, interest, and penalties described above, and each preferring compromise and settlement to resolve their claims, disputes and defenses relating to the Pending Litigation – the Department, Richland County, and CMRTA hereby agree as follows:

TERMS

1. RELEASES

- 1.1. Releases by Richland County. Richland County forever releases the Department from any and all past, present, or future rights, claims or demands for the Department to determine, adjust, or re-determine any category, amount, or finding relating to the Transportation Penny Tax Program during the Dispute Period, thereby forever closing this period from further claims or any other actions of any kind or nature by Richland County against the Department relating to the Transportation Penny Tax Program..
- 1.2. Releases by the CMRTA. The CMRTA forever releases the Department from any and all past, present, or future rights, claims or demands for the Department to determine, adjust, or re-determine any category, amount, or finding relating to the Transportation Penny Tax Program during the Dispute Period, thereby forever closing this period from further claims or any other actions of any kind or nature by the CMRTA against the Department relating to the Transportation Penny Tax Program.
- 1.3. Releases by the Department. The Department forever releases Richland County and the CMRTA from any and all past, present, or future rights, claims or demands in connection with the Department's determination, adjustment, or re-determination any category, amount, or finding relating to the Transportation Penny Tax Program during the Dispute Period, thereby forever closing this period from further claims or any other actions of any kind or nature by the Department against Richland County and the CMRTA relating to the Transportation Penny Tax Program.

2. AMOUNT OF PAYMENT

- 2.1. Payment Amount by Richland County. To settle the Dispute, Richland County agrees to reimburse its Penny Tax Program fund in the amount of **FIFTEEN MILLION FIVE HUNDRED THIRTY EIGHT THOUSAND TWO HUNDRED FIFTY FIVE (\$15,538,255) DOLLARS** in accordance with the terms in Paragraph 2.1.1.
 - 2.1.1. Within thirty (30) days of the date this Agreement is executed, Richland County agrees to reimburse the Penny Tax Program fund the sum of **ONE MILLION FIVE HUNDRED THIRTY-EIGHT THOUSAND TWO HUNDRED FIFTY-FIVE (\$1,538,255) DOLLARS**. Within thirty (30) days of the date this Agreement is executed, Richland County will certify to the Department by way of an affidavit from the Finance Director or County Administrator that this repayment has been made. For each of the next ten fiscal years (ending in fiscal year 2032), Richland County will annually

reimburse the Penny Tax Program fund the sum of **ONE MILLION FOUR HUNDRED THOUSAND (\$ 1,400,000) DOLLARS**. Richland County will certify annually to the Department in writing signed by Richland County's Finance Director or County Administrator that the annual reimbursement payments have been made; this certification must be made no later than thirty (30) days after the close of Richland County's fiscal year. **While Richland County will make every effort to follow the payment schedule prescribed above, both Parties recognize that financial circumstances may arise, when taken in combination with the annual payment of \$1,400,000, would negatively impact Richland County's debt limit and/or credit rating. If such should occur, Richland County may elect to make a lesser payment or no payment in that year, with the understanding that the amount not paid will either be added to a future payment or additional time will be added to the payment schedule to accommodate that payment. However, in no event will any additional time added to the payment schedule extend beyond 2035, which is when the Richland County Transportation Program is scheduled to expire.**

2.1.2. For purposes of this settlement and for all future periods in which the Richland County Transportation Program is in existence, the Parties agree that Richland County may, at its discretion, sell mitigation credits from the Mill Creek Mitigation Bank to third parties for projects unrelated to the Richland County Penny Tax Transportation Program. When such a sale of mitigation credits occurs, Richland County agrees to transfer the amount of that sale that equals the cost basis for those credits to the Richland County Penny Tax Transportation Fund. However, with respect to the profit, if any, realized upon the sale of such mitigation credits, that profit may be paid to the General Fund and then utilized at the County's discretion.

2.2. Payment Amount by the CMRTA. To settle this dispute, including the Audit Period and Pending Litigation, the CMRTA agrees to reallocate the Penny Tax revenues it received during the Audit Period to those items allowed by the Transportation Act, and to reallocate non-Penny Tax funds to pay for those ineligible expenses that were previously paid with Penny Tax funds during the Audit Period. CMRTA agrees to reallocate a total of **ONE MILLION THREE HUNDRED NINETY FIVE THOUSAND ONE HUNDRED SIXTY THREE (\$1,395,163) DOLLARS**, which represents the full amount of Penny Tax funds that the CMRTA spent on ineligible expenditures during the Audit Period. Within thirty (30) days of the date this Agreement is executed, the CMRTA will certify to the Department in writing that this reimbursement has been made.

2.3. The Parties agree that this Agreement does not require Richland County and CMRTA to make payment to the Department or to any other third party. With respect to

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Richland County, the Parties agree that the payment of the amounts covered by this Agreement represent a repayment to or reimbursement of the Richland County Penny Tax fund, with those amounts being transferred from Richland County's general fund or other funds to the Penny Tax fund. With respect to CMRTA, the Parties agree that the payment of the amounts covered by this Agreement represents a reallocation of CMRTA funds; in other words, any expenditures identified in the audit as not in compliance with the Guidelines must be paid with non-Penny Tax funds.

3. **GUIDELINES AND STANDARDS**

- 3.1. The Parties agree the Guidelines, as amended contemporaneously with this Agreement, a copy of which is attached hereto as Exhibit A, shall govern the expenditure of Transportation Tax funds by Richland County and the CMRTA for the duration of the current Richland County Penny Tax Program and any future Transportation Tax program, unless or until there is a change in South Carolina law governing such expenditures. A change in South Carolina law refers to legislation by the South Carolina General Assembly or a finally decided South Carolina appellate court decision.
- 3.2. The Department agrees to issue a Revenue Ruling regarding the expenditure of Transportation Tax revenues within twelve (12) months of the execution of this Agreement. The substance of the Revenue Ruling will be consistent with the amended Guidelines attached hereto and will apply to all counties and political subdivisions that receive Transportation Tax revenues. The Department further agrees that Richland County is an "interested party" as described in Revenue Procedure 09-3, Section V(A)(4), and as such, the Department agrees to notify Richland County through its County Attorney of the draft Revenue Ruling such that Richland County can make comments and/or request a conference for the purpose of making its comments known to the Department.
- 3.3. Nothing in this Agreement shall be construed to limit the rights of Richland County or CMRTA to seek judicial or administrative review of any future audit findings for periods beginning after the execution of this document by the Department. Richland County and CMRTA specifically reserve their right to appeal any dispute with the Department regarding the expenditure of Transportation Tax revenues in accordance with the Revenue Procedures Act or as otherwise provided by law.

4. **OPERATING EXPENSES:**

- 4.1. Central Midlands Regional Transit Authority. The Department agrees the CMRTA may be funded by Penny Tax revenues in accordance with Ordinance Number 039-12HR and referendum, and that the use of the Penny Tax revenues for operating the CMRTA system is an eligible cost as provided in the Guidelines, unless or until a court of competent jurisdiction rules otherwise.

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- 4.2. The Department further agrees not to hold Richland County legally liable for any improperly paid expenditures made by the CMRTA, past or future. As part of its annual audit, the CMRTA agrees that its outside independent auditor will findings in its audit certifying whether the CMRTA's expenditures of Penny Tax funds are compliant with all laws, regulations, and Department policy documents governing such. The CMRTA further agrees to furnish its annual audit report and Management Letter to Richland County. Nothing in this Agreement shall be construed to impose a duty on Richland County to ensure correction by the CMRTA of any issue identified in such audit report. Upon receipt of the audit report and Management Letter, Richland County may, in its discretion, forward the audit report to the Department for further action that the Department deems appropriate.
- 4.3. Richland County Transportation Department. The Department agrees that the Guidelines permit Richland County to use Penny Tax revenues to fund the operating expenses of the Richland County Transportation Department, provided those expenditures are tethered to a specific transportation-related capital project or the administration of a specific transportation project as explained in Sections A and B of the Guidelines, as amended herein. The Department also agrees that such eligible operating expenses incurred with respect to multiple transportation projects may be proportionally allocated among those projects based on a reasonable and appropriate allocation method.

5. **DISMISSAL OF PENDING LITIGATION**

- 5.1. The Parties agree the Circuit Court Litigation captioned *Richland County, et al. vs. South Carolina Department of Revenue*, Docket No. 16-CP-40-3102 shall be dismissed with prejudice and forever ended.
- 5.2. The Parties agree the ALC Litigation captioned *Richland County v. South Carolina Department of Revenue*, Docket No. 20-ALJ-17-0224-CC, shall be dismissed with prejudice and forever ended.
- 5.3. Upon execution of this Agreement, the Parties authorize and direct their counsel to execute and file such documents and papers as necessary to dismiss the Pending Litigation with prejudice.

6. **NO ADMISSION OF LIABILITY**

- 6.1. The Parties agree this Agreement and the terms within the Agreement result from a compromise of disputed claims and that payments made in settlement may not be construed as an admission of liability by either Party and that each Party denies liability of any nature or kind.
- 6.2. The Parties understand and agree that this Agreement and its terms shall not be

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admissible as evidence in nor used in any manner with respect to any ongoing or future litigation that may ensue between the Parties, with the exception of any action brought to enforce the terms of this Agreement.

7. OTHER MATTERS

- 7.1. Terms Understood. Each of the Parties declares that the terms of this Agreement have been read, understood, and voluntarily accepted by them; that they have had ample opportunity to review the terms with their respective legal, financial, and tax advisors; that they have been provided the opportunity to review as they deem necessary; and that they, with their advisors, have signed this Agreement in reliance upon their own (or their advisors') review, independent investigation, and inquiry.
- 7.2. Jointly Drafted. The Parties have participated jointly in the negotiation and drafting of this Agreement and should any ambiguity or question of intent or interpretation arise, no presumption or burden of proof shall arise favoring or disfavoring any Party by the authorship of any portion of this Agreement.
- 7.3. Conciliatory Further Acts. The Parties shall sign and deliver to the other Parties such further instruments, contracts, forms and other documents and shall perform such further acts as may be necessary or desirable to carry out, complete, and perform all the Parties' covenants and obligations under this Settlement Agreement.
- 7.4. Recitals Incorporated. The recitals set forth initially are incorporated into this Agreement and this Agreement shall be interpreted and construed with reference to the recitals.
- 7.5. Cost Distribution. The Parties agree that each Party is to bear its own fees and costs, including attorneys' fees and costs, incurred in the negotiation of this Agreement.
- 7.6. Complete Document. This Agreement supersedes all prior agreements and understandings between the Parties relating to the subject and is intended by the Parties as a complete and exclusive statement thereof.
- 7.7. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective heirs, legal representatives, successors, and assigns. For this paragraph, a successor to the Department shall include any successor agency or agencies or successor governmental entity or entities authorized by the South Carolina General Assembly to administer, assess, and collect taxes and revenues.
- 7.8. Complete Defense. This Agreement may be pleaded as a full and complete defense to any action, demand, claim, suit or other proceeding which may be instituted, prosecuted or attempted for, upon, or regarding, the claims released by this Agreement.
- 7.9. Severable. Each provision of this Agreement is severable such that if any court of

competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remainder of this Agreement will remain in force.

- 7.10. No Modification. This Agreement may not be changed, modified, altered, or amended except by an agreement in writing signed by the Party against whom enforcement of such change, modification, alteration or amendment is sought.
- 7.11. Choice of Law. The validity, construction, interpretation, and enforceability of this Agreement are governed by the laws of the State of South Carolina.
- 7.12. Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute the same instrument. Fax or PDF signatures are to be treated as original signatures for this Agreement. This Agreement shall not be effective unless it is executed by each of the Parties.
- 7.13. Warranties. Each party represents and warrants that it has the full and complete legal authority to enter into this Agreement, that the individuals executing this Agreement have the legal authority to do so, and that this Agreement shall be binding and enforceable in accordance with its terms when duly executed by both Parties.
- 7.14. Revenue Procedures Act. In accordance with S.C. Code Ann. § 12-60-40, this Agreement represents both Richland County's and the CMRTA's written waiver of any rights it may have under the South Carolina Revenue Procedures Act in connection with the Final Audit Report or the Dispute Period, including but not limited to the right to obtain a written Department Determination (as required under S.C. Code Ann. § 12-60-450(E)) relating to any claims or defenses raised by the Parties in connection with the Final Audit Report or the Dispute Period.
- 7.15. Failure to Comply. Should any Party violate the terms of this Agreement, a compliant Party may seek resolution by filing a complaint in the South Carolina Circuit Court in Richland County, South Carolina.

8. **NOTICES**

- 8.1. All notices or other communications required or permitted to be given under this Settlement Agreement shall be in writing and shall be sent by United States Postal Service first class mail:

- 8.1.1. As to Richland County:

Richland County Administrator
Richland County Administration Building
2020 Hampton Street, Suite 4069
P.O. Box 192

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Columbia, South Carolina 29204

8.1.2. As to the CMRTA:

Executive Director
Central Midlands Regional Transit Authority (COMET)
3613 Lucius Road
Columbia, South Carolina 29201

8.1.3. As to the Department:

Chief Legal Officer
Office of General Counsel
South Carolina Department of Revenue
P.O. Box 125
Columbia, South Carolina 29214
803-898-5130

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the 20 day of July, 2021.

RICHLAND COUNTY

SOUTH CAROLINA DEPARTMENT OF REVENUE

By: Leonardo Brown
SIGNATURE

By: W. Hartley Powell
SIGNATURE

Leonardo Brown
PRINT NAME

W. Hartley Powell
PRINT NAME

County Administrator
TITLE

Director
TITLE

7/20/2021
DATE

7/20/21
DATE

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CENTRAL MIDLANDS REGIONAL
TRANSIT AUTHORITY

By: LeRoy DesChamps
SIGNATURE

LEROY DESCHAMPS
PRINT NAME

INTERIM EXECUTIVE DIRECTOR
TITLE

JULY 20, 2021
DATE

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EXHIBIT A



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

**GUIDELINES FOR USE OF TRANSPORTATION
TAX REVENUE**

WHEREAS, the Optional Methods for Financing Transportation Facilities Act (the "Transportation Act"), codified at Title 4, Chapter 37 of the Code of Laws of South Carolina 1976, as amended, authorizes the governing body of a county to impose a sales and use tax in an amount not to exceed one percent (the "Transportation Tax," sometimes commonly referred to as the Penny Tax) within its jurisdiction for a single project or for multiple projects for a specific period of time to collect a limited amount of money, *see* S.C. Code Ann. § 4-37-30(A) (Supp. 2017); and

WHEREAS, the Transportation Act provides that the types of projects permitted to be funded with Transportation Tax revenues are highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities, *see* S.C. Code Ann. § 4-37-30(A)(1)(a); and

WHEREAS, the South Carolina Department of Revenue (the "Department") administers and collects the Transportation Tax and the revenues are periodically remitted to the county by the State Treasurer in accordance with the provisions of the Transportation Act. S.C. Code Ann. § 4-37-30(A)(15) (Supp. 2017); and

WHEREAS, the South Carolina Supreme Court in *Richland County and the Central Midlands Regional Transit Authority v. S.C. Department of Revenue*, -- S.E.2d --, 2018 WL 1177700 (March 7, 2018) held that the Department has extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code, which confers upon the Department a duty to ensure that a county's expenditures of Transportation Tax revenues comply with the revenue laws the Department is charged with enforcing; and

WHEREAS, the Department is the agency statutorily tasked with administering a Transportation Tax program, and the expenditure of millions of dollars of Transportation Tax revenues is an issue of wide concern both to the Department and to the residents and taxpayers of the county implementing the Transportation Tax; and

WHEREAS, Transportation Tax revenues must be used in accordance with statutory restrictions imposed by the General Assembly, namely, proceeds must be used for the types of transportation-related projects identified in the Transportation Act; and

WHEREAS, the Supreme Court determined that a proper expenditure of Transportation Tax funds must be tethered to a specific transportation-related capital project or the administration of a specific transportation project; and

WHEREAS, the Supreme Court has determined that objective criteria are necessary to

establish compliance with the Transportation Act, and has ordered that a county that has implemented a Transportation Tax program shall be subject to guidelines for determining whether expenses are properly allocable to a specific transportation project, or the direct administration of a specific transportation project; and

WHEREAS, the Department is authorized to conduct audits involving the taxes it administers and collects, including the Transportation Tax; and

WHEREAS, upon a determination that a county has expended Transportation Tax funds contrary to the Transportation Act, the county shall repay the improper expenditures from other legally available sources; and

NOW THEREFORE, a county shall be subject to the following guidelines and standards for determining whether expenditures of Transportation Tax revenues are proper:

GENERAL GUIDELINES

The revenues generated from the Transportation Tax must be used in accordance with statutory restrictions imposed by the General Assembly – namely, proceeds must be used for “capital costs” of the types of transportation projects identified in the Transportation Act or the administration of a specific transportation project.

“Capital Costs” means expenditures that are treated as “capital” expenditures under generally accepted accounting principles. In general, costs are treated as Capital Costs if they are incurred for the planning, acquisition, construction, or improvement of property having a useful life of more than one year and include, without limitation, costs related to the planning, acquisition, construction, or improvement of land, buildings, vehicles, equipment, infrastructure improvements, and intangible assets (*e.g.*, software and intellectual property with a useful life of more than one year). Capital Costs also include costs and expenditures that increase the value of existing property with a useful life of more than one year or that extend the useful life of existing property for a period of more than one year. “Capital Costs” consist of both Direct Costs and Indirect Costs (as each term is described below).

ELIGIBLE COSTS

For purposes of these guidelines, “Eligible Costs” are Capital Costs, whether Direct Costs or Indirect Costs, and costs for Mass Transit Systems as further described in (C) below. “Eligible Costs” generally have the following characteristics:

- Costs that are reasonable, meaning that, in its nature and amount, it does not exceed that amount which would be incurred by a prudent person under the circumstances then and there prevailing in the conduct of government business.
- Costs that are generally recognized as ordinary and necessary for the project;
- Costs that are in compliance with generally accepted sound business practices;

- Costs that are the result of arms-length bargaining;
- Costs that are in compliance with Federal and state laws and regulations, as applicable;
- Costs that are consistent with market prices for comparable goods or services;
- Costs that are consistent with the county's fiduciary responsibilities to the public; and
- Costs that do not constitute a significant deviation from the county's established practices.

A. Direct Costs

"Direct Costs" are expenditures for material, labor, and financing for transportation-related projects that would be properly chargeable to a capital asset account as distinguished from current expenditures and ordinary maintenance expenses.

"Project(s)" means those transportation-related projects described in the imposition ordinance and ratified in the referendum question in accordance with the provisions of the Transportation Act, specifically: highways, roads, streets and adjacent sidewalks, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets and adjacent sidewalks, bridges, and other transportation-related projects.

Examples: The following, to the extent directly related to the planning, acquiring, constructing, or improving a Project or any portion thereof, are examples of eligible Direct Costs:

- The purchase price of the property (*e.g.*, land and interests in land, existing buildings and structures).
- The amounts paid a construction company for the construction of a Project (*e.g.* highways, roads, streets and adjacent sidewalks, bridges, bus terminals, train terminals, greenbelts, and other transportation-related facilities).
- Direct labor costs.
- Construction material costs (*e.g.*, asphalt, concrete, steel, electrical wiring, and piping including related shipping, freight, and insurance charges).
- Equipment costs directly used in the construction or improvement of a Project, including lease payments and depreciation.
- Site preparation costs (*e.g.*, demolition, environmental remediation, and utility relocation).
- Engineering, architectural, and design costs.

- Cost of permits, licenses, performance bonds, surety bonds, easements, and rights-of-way.
- Legal, accounting, and other professional service fees incurred in connection with the planning, acquisition, construction, and improvement of a specific transportation related project (e.g. right of way acquisition and condemnation).
- Inspection costs.
- Interest accrued on debt incurred to finance a Project, up to the time it (or the portion thereof that is financed) is placed in service. A Project (or portion thereof) shall be treated as “placed in service” at the time at which, based on all the facts and circumstances, (i) the Project (or portion thereof) has reached a degree of completion which would permit its operation at substantially its design level and (ii) the Project (or portion thereof) is in fact in operation at such level.
- Debt service on bonds or other obligations issued to finance a Project or Projects, including the costs of issuance of such bonds or obligations.
- Fees paid for public engagement and public information pertaining directly to a transportation project or projects.
- The cost of mitigation credits required by appropriate federal authorities to offset ecological losses created by a transportation project/improvement.

B. Indirect Costs

“Indirect Costs” are costs that benefit (i) the construction and improvement of authorized Projects or (ii) the construction and improvement of authorized Projects and other county operations. Only the portion of the Indirect Costs related to Projects are Eligible Indirect Costs.

“Eligible Indirect Costs” are costs that directly benefit or are incurred by reason of the planning, acquisition, construction or improvement of a Project. Such indirect costs should be proportionally allocated among the projects based upon an appropriate allocation method consistent with applicable accounting standards.

Eligible Indirect Costs do not include costs that are otherwise listed as Ineligible Costs (as defined and described herein below).

Examples:

The following are examples of Eligible Indirect Costs:

- Portion of an employee’s salary and benefits whose time is allocable to administering the planning, acquisition, construction and improvement of Projects.
- Licensure and Continuing Education expenses for full time transportation department employees whose job descriptions require that they hold a professional license.

- Ordinary and necessary costs of office equipment and supplies, telephone, transportation, fuel, and similar costs for employees devoted to administering the planning, acquisition, construction and improvement of Projects. This is meant to include the ordinary and necessary operating expenses of a County department devoted exclusively to the operation of a Transportation Penny program.
- Where a county department provides services to employees directly engaged in the transportation program, including the provision of public information to affected citizens or communities impacted by one or more Projects, and other county departments (*i.e.* a mixed service department), a portion of the county department's costs may be allocated as Eligible Indirect Costs based on either labor cost or labor hours.

C. Mass Transit Systems Costs

“Mass Transit System” as used herein refers only to a mass transit system.

Eligible Costs include costs incurred for the acquisition, design, construction, equipping, and operation of Mass Transit Systems, provided that such costs are consistent with the public purpose of the Transportation Act, the county's imposition ordinance and the referendum approved by voters.

Eligible Costs for Mass Transit Systems must be tethered to the administration of the Mass Transit System and must be reasonable and not excessive. Eligible Costs include purchases of capital assets. Eligible Costs also include costs and expenses paid or incurred in connection with the day to day operation of the Mass Transit System.

Additionally, the Mass Transit System must comply with certain Federal and State requirements in the operation of the Mass Transit System. The expenditures necessary to fulfill these Federal and State requirements are also Eligible Costs, provided the expenditures are reasonable and not excessive.

INELIGIBLE COSTS

“Ineligible Costs” are all costs that are not tethered to a Project or the direct administration of a Project. Furthermore, costs that are excessive or unreasonable or that do not directly benefit or are not incurred by reason of the planning, acquisition, construction or improvement of a Project are Ineligible Costs.

Examples:

The following are examples of Ineligible Costs:

- Amounts paid in transactions involving conflicts of interest as defined in S.C. Code Ann. § 8-13-700 and subsequent amendments.
- County wide programs intended to support all facets of county operations.

- County costs for the routine maintenance or upkeep of roads, streets, thoroughfares, bridges and highways.
- Expenditure for establishment or support of programs to benefit constituents or persons.
- Any costs associated with a mentor/mentee program.
- Legal fees and other professional costs incurred in prosecuting or defending a lawsuit or claim related to an alleged improper expenditure of Transportation Tax revenues.
- County overhead costs (e.g. utilities, office supplies, telephone, office facilities, salaries), except those incurred by the County Transportation Department in managing and administering the Projects.
- Costs associated with a county's normal cost of doing business (e.g., finance and accounting, procurement, executive management, human resources, budget and grants management, etc.) except where such services are performed exclusively for the benefit of the Transportation Department.
- County support costs (e.g. support for the small local business enterprise program of the office of small businesses opportunities, procurement, human resources, budget and grants management, and finance-related functions) except where such services are performed exclusively for the benefit of the Transportation Department.
- Professional fees (e.g. legal, accounting, and engineering) not directly related to a Project or exclusively performed for the benefit of the Transportation Department.
- Costs that are duplicative.

COMPLIANCE WITH GUIDELINES

These guidelines apply to all counties and political subdivisions that receive Transportation Tax funds, including through intergovernmental agreements, contracts, or agreements with firms or a consortium of firms. Nothing herein shall be construed so as to permit a county to apply funds from the Transportation Tax revenue for other county purposes.

Based on the Department's extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code, the Department is authorized to conduct audits to ensure a county's expenditures of Transportation Tax revenues comply with the provisions of the Transportation Act and the South Carolina Code. All improper expenditures of Transportation Tax revenue shall be reimbursed from other legally available sources within the current fiscal year.

In addition, a county or political subdivision that receives any Transportation Tax funds shall conduct an independent annual audit of the financial records and transactions and expenditures of Transportation Tax funds. The results of the annual audit will be made available to the public on the county's website.